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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JAN - 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Phase II E911 Implementation Waivers  
Of Nextel Communications, Inc. and  
Hawaiian Wireless, Inc.

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DA 00-2704  
CC Docket No. 94-102

To: The Commission

COMMENTS OF PACIFIC WIRELESS TECHNOLOGIES, INC.

Pacific Wireless Technologies, Inc. ("Pacific"), by its attorneys and pursuant to the invitation extended in the *Public Notice* released by the Federal Communications Commission ("FCC" or "Commission") on December 4, 2000,<sup>1</sup> hereby submits its comments responsive to the Petition for Waiver of Hawaiian Wireless, Inc. ("HWT") and the Request for Waiver of Nextel Communications, Inc. and Nextel Partners, Inc. (collectively, "Nextel") (the "Requests"). Pacific generally supports the Requests and asks that whatever relief the FCC extends to Nextel should also be extended to Pacific.

I. BACKGROUND

Pacific was formed in October 1999 through the merger of two leading 800 MHz Specialized Mobile Radio ("SMR") companies based in Sacramento and Fresno, California, with approximately 12,000 customers. Several months ago, Pacific announced the availability of digital SMR service employing Motorola's iDEN technology, making Pacific, to the best of its knowledge, the 3<sup>rd</sup> U.S. wireless carrier to employ a digital SMR service using iDEN technology (Southern Communications, Inc. and Nextel are the other two). Pacific will eventually provide continuous iDEN coverage from Redding, California south to Bakersfield, portions of the south central California coast from San Jose south to Santa Barbara and roaming capability into the San Francisco Bay Area and the Reno/Lake Tahoe areas. Pacific employs a unique version of iDEN service,

<sup>1</sup> *Public Notice* No. DA 00-2704, rel. December 4, 2000.

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employing a “high tower-high power” design to offer coverage in the more remote areas of California. High tower-high power works well in the mountainous areas served by Pacific, and also reduces its infrastructure costs so that it can compete with entrenched wireless competitors.

Nextel seeks a waiver of the requirement that it provide so-called Phase II E911 services on October 1, 2001. Nextel’s request asks that it be permitted to begin E911 implementation on October 1, 2002 and that 95% of Nextel’s iDEN customer base be converted to handsets supporting E911 technology by December 31, 2005. Hawaiian does not primarily seek an extension of the E911 implementation deadline. Instead, HWI seeks a waiver of the E911 rules so that it need not comply with those requirements. Alternatively, HWI seeks a two year extension of the implementation deadlines.

Like Pacific, Nextel employs equipment using iDEN technology, which is manufactured exclusively by Motorola, Inc. (“Motorola”). On or about November 9, 2000, Pacific submitted its E-911 Phase II ALI [Automatic Location Identification] Report (the “Pacific Implementation Report”). There, Pacific noted that it intends to employ handset-based ALI technology to satisfy the requirements imposed on it by Section 20.18(g)(h) of the FCC’s rules. In particular, Pacific stated that it intended to work with Motorola to implement Assisted Global Positioning System (“AGPS”) technology. Based on Motorola’s representations to Pacific, Pacific believes that AGPS is the most feasible ALI solution for iDEN carriers. Nevertheless, as noted in the Pacific Implementation Report, Pacific is uncertain about its ability to meet the FCC’s implementation schedule for ALI technologies. Accordingly, Pacific faces the same issues as those faced by Nextel. Pacific therefore supports Nextel’s request and asks that the FCC extend to Pacific the same relief that it ultimately provides to Nextel.<sup>2/</sup>

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<sup>2/</sup> Because Pacific employs the same technology platform as Nextel and seeks the same relief as does Nextel, it does not address HWI’s waiver request. Pacific has not submitted its own request for waiver

## II. DISCUSSION

As Nextel points out to the Commission, there is a limited market for iDEN location service technology that meets the FCC's Phase II E911 requirements. Accordingly, implementation of this technology has been delayed by the lack of interest from multiple sources. As Nextel points out, "[e]ven today, there is no location technology solution that has been fully integrated and tested on an iDEN handset or network that meets the Commission's accuracy requirements."<sup>3/</sup>

The FCC's 911 regulations cannot logically require covered licensees to deploy technologies that are not commercially available. Pacific, like Nextel, is not an equipment manufacturer and has no ability to advance the state of the art. In any case, the FCC's E911 regulations are premised, by their very structure and purpose, on presumed advancements in technology - otherwise the FCC would have required immediate compliance with Phase II of its E911 regulations.<sup>4</sup> However, as the D.C. Circuit observed, in setting technical regulations, the FCC should not "go beyond the present state of the art," defined as what is "commercially feasible," not "*ne plus ultra*, the apex of present technical achievement." *Electronic Industries Assoc. v. FCC*, 636 F.2d 689 (D.C. Cir. 1980). Unless, the FCC acts to issue waivers as requested in this proceeding, it will be permitting past predictive judgments, not technology availability, to determine the timing of its regulatory mandates.

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because it sought to determine, as the October 1, 2001 deadline approached, Motorola's plans for E911 implementation. While Pacific has not yet requested a waiver of the implementation deadline, it likely would have done so in due course. Nevertheless, the same circumstances that applied to Nextel also apply to Pacific. Accordingly, the FCC should not fail to treat Pacific in the same manner as Nextel merely because Pacific has not yet sought the relief that it plainly requires based on Nextel's Request.

<sup>3/</sup> Nextel Request at 8-9.


<sup>4</sup> See *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676, ¶¶ 67-68 (1996).

### III. CONCLUSION

Based on the foregoing, Pacific urges the Commission to grant the Nextel Request and provide similar relief to Pacific.

Respectfully submitted,

**Pacific Wireless Technologies, Inc.**

By:   
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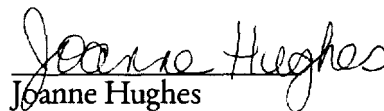
January 5, 2001

## CERTIFICATE OF SERVICE

I, Joanne Hughes, a secretary in the law firm of Mintz, Levin, Ferris, Glovsky and Popeo, P.C., certify that I have, this 5<sup>th</sup> day of January, 2001, caused a copy of the foregoing "Comments" to be served upon the following by prepaid U.S. mail:

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